

REA LAW JOURNAL

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COOPERATIVE LEGISLATION

The history of cooperation in America reaches back much farther than the history of cooperative law. The first American cooperatives were organized before 1800, but not until after the middle of the 19th century did cooperative laws begin to appear on the statute books of one state after another. All of the early cooperatives either had to function as unincorporated associations or had to incorporate under the general corporation laws of the respective state. In some states this situation continued into the beginning of the 20th century.

All federal legislation regarding cooperatives, such as exemptions under the Anti-trust Act, creation of a cooperative marketing division in the Department of Agriculture and passage of the Federal Credit Union Act, is of relatively recent date.

As stated in the foreword to the government publication "Consumers' Cooperative Statutes and Decisions"*, "The realization has been growing on the part of cooperators and legislators that the cooperative is or ought to be, legally as well as factually and theoretically, a far different institution from the business corporation. Since the time of the earliest statutory recognition of cooperatives....progress has been made toward filling in the outlines of a self-contained code of law for cooperatives, defining their nature by mandatory provisions, permitting leeway where a business corporation is

restricted, and restricting them where a business corporation has leeway."

However, there is still no uniformity of definition among state statutes as to what constitutes a cooperative. One of the better definitions is that of the Wisconsin statute which requires all incorporated cooperatives to operate on a "cooperative basis" defined as follows: "(a) Each member has one vote and only one vote, (b) the rate of dividends upon stock is limited to 8 per cent, (c) the net proceeds from the business of such corporation are distributed to the patrons in proportion to the volume of business transacted by said patrons with the corporation."

This difficulty of legal definition is not confined to American legislation. In Great Britain, for example, under the original Industrial and Provident Societies Act, it was possible to organize "cooperatives" which were cooperative merely in name. That Act has been amended repeatedly during the past 87 years and is now better adapted to its purpose. But it still does not define the voting rights of members or state how net earnings must be distributed. Those details are determined in the "rules of the society" which must be recorded with the State Registrar of Friendly Societies.

In Switzerland, the first cooperative law of 1883 did not define a cooperative. It was so elastic that "it did not prevent profit-seeking enterprises from making use of the cooperative form for the purpose of disguising from the general public the real character of

their undertakings.** Not until 1937 was a legal definition attempted in the Swiss Commercial Code. It is interesting to contrast the Wisconsin definition with this Swiss definition which states: "A Cooperative Society is a body corporate formed by a variable number of persons or associations for the primary purpose of promoting or safeguarding particular economic interests of its members by means of collective self-help."

This conception of a cooperative as a collective self-help enterprise is basic to the revised Swiss Law. It sets the cooperative apart from a commercial enterprise aiming at profits. It emphasizes the idea of personal participation and control of capital in the profit corporation. In line with this reasoning it stipulates that admission to a cooperative must not be made excessively difficult, that persons entrusted with management are responsible under the law if the cooperative is harmed as a result of their failure to comply with legal requirements, and that the general meeting of members must remain the supreme controlling body. No proxy voting is allowed, except that a member prevented from attending the general assembly may appoint another member as his representative.

Most European countries have a general cooperative law which covers all kinds of cooperative enterprise, regardless of special purposes and functions. A notable exception is the French law which provides separately for different types of economic activities.

Here in America, there has been a marked tendency to legislate separately for varying types of cooperatives. Many states have agricultural cooperative marketing acts under which a consumers' cooperative cannot incorporate. This necessitated the separate enactment of consumers' cooperative statutes not only

for urban but also, to some extent, for rural purchasing cooperatives.

In order to do away with the need of several cooperative acts in any one state, a movement has recently been started to promote a Uniform Agricultural Cooperative Act. While this tendency is laudable, it is still doubtful to what extent it can succeed. For instance, the virtual exclusion of non-farmers under the Uniform Act makes that act of no use to REA cooperatives which must necessarily offer membership to any rural resident within service distance of electric lines, regardless of his occupation.

It was the inadequacy of existing legislation for the purpose of cooperative rural electrification that caused the promotion and adoption of special legislation for that purpose in a number of states. The latest effort in this direction is a draft of a Rural Electric Cooperative Act prepared by REA for the consideration of interested state legislatures. That act, which has so far been adopted in 8 states, is based on widely recognized cooperative principles and on the extensive experience gained by REA since its inception. While that Act does not separately define the term "cooperative", its provisions readily fall within the meaning of the Swiss definition quoted above. Its purpose is to make possible organized self-help enterprises for rural electrification on a basis of democratic control.

(To Be Continued)

Udo Rall

REA Cooperative Consultant

*Issued in 1937 by the Consumers' Project of the U. S. Department of Labor and obtainable from the Superintendent of Documents, Washington, D. C. for 20cts.

**From Swiss Cooperative Law, by Dr. W. Kohl, in August 1939 issue of Review of International Cooperation.

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REA LAW JOURNAL

A review of that portion of the law important and interesting to attorneys working in the field of rural electrification.

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The Journal is informational only and should in no wise be interpreted as expressing the views of the Rural Electrification Administration or any division thereof.

Address suggestions and contributions to the Editorial Office REA, Room 203, 1518 "K" Street, Washington, D. C.

RECENT CASES

Chattel Mortgages - Requirement of Renewal Within 90 Day Period.

North Dakota Statute provided that chattel mortgages would cease to be valid as against creditors of and subsequent purchasers from the mortgagor after the expiration of three years from the date of filing of the mortgage unless within ninety days next preceding the expiration of such term, a renewal of the mortgage was filed. Mortgagee did not file an affidavit of renewal until twenty days after the three year period had expired. Held, a subsequent purchaser will prevail over the mortgagee. *Royal v. Aubol*, 287 N. W. 603 (N. D. 1939).

The court stated that statutory provisions fixing the time within which a chattel mortgage must be renewed must be strictly complied with and that the

mortgagor's attempted renewal after the time fixed by statute was without effect.

Negligence - Liability of REA Cooperative for Injuries Resulting From Failure to Ground Wires Running from Electric Lines and Attached to Plaintiff's Residence.

Member of REA Cooperative brought suit against cooperative for \$10,000 for injuries resulting from the fact that on a particular night lightning struck the poles and wires on the main line of the Cooperative opposite his residence and then fastened to his residence. The member alleged that the Cooperative, by failing to ground the lateral wire which was affixed to the wall of his residence, permitted the electricity to be conveyed across such wire into the room occupied by him instead of properly conducting it into the ground, and thus injured the member who was lying in bed. The cooperative filed a general demurrer and a special demurrer alleging that from the member's complaint "it could not reasonably be said that the plaintiff was not negligent in not himself grounding the wire or removing the same from the wall of his residence, and that he could by the exercise of ordinary care have avoided the consequences of the defendant's alleged negligence." Held, judgment for the plaintiff. *Central Georgia Electric Membership Corporation v. Heath*, 4 S. E. (2d) 700 (Ga. 1939).

The court ruled that the statements in the defendant's demurrer were "without merit, and in the main call for information peculiarly within the knowledge of the defendant", and therefore, should have been raised by way of an affidavit of defense rather than by demurrer.

Taxation - Sales of Electricity by Non-public Utility Not Subject to Wyoming Sales Tax.

A company, which had contracted to pump and produce oil for the owners of certain oil leases, owned and operated an electric system for the sole purpose of furnishing power for its own operations and supplying light to its employees' camps. Pursuant to contract it billed the lease holders for the electricity so used. Held, the Sales Tax was not applicable because the company was furnishing a service, not making a sale of electricity. State Board of Equalization v. Stanolind Oil & Gas Co. 94 P. (2d) 147 (Wyo. 1939).

The Court said, however, that even though the transaction be construed a sale, it would not be taxable because the Sales Tax applies only to sales of electricity by public utilities. The Act levies this tax on the amount paid "to public utilities, gas electric and heat corporations as defined by Chapter ninety-four (94), Wyoming Revised Statutes, 1931, whether such corporations are municipally or privately owned for gas, electricity, or heat furnished for domestic, industrial or commercial consumption." It seems that since the Act applies only to sales of electricity by public utilities, Wyoming REA projects should be exempt from this tax.

BOOK REVIEW

CASES ON PUBLIC UTILITY REGULATION BY
Irston R. Barnes. E. S. Crofts & Co.,
1938, New York. Pages xx, 984.

"Cases on Public Utility Regulations' is a by-product of eight years'

experience in case method of teaching Public Utility Regulation to undergraduates majoring in Economics." (underlining supplied.) This quotation, taken from the author's own introduction, is remarkably accurate. The work is not prepared for use by law students.

It is the intention of the author to use the case method throughout the entire book. Citations to the cases used appear as footnotes rather than under the names of the cases and no reference to the Reporter System is to be found. The personnel of the Tribunal trying each case is given, a practice which might well be followed in case books for law school use. Each chapter has an introductory note setting forth the problems to be discussed in the following pages and at the end of each chapter a number of suggestive questions are given. These notes and questions replace almost entirely the usual footnotes found in case books for law school use. About one-half of the cases used are United States Supreme Court cases while the rest of the cases are chiefly from New York and Wisconsin, which is quite appropriate since these two States have probably led the other jurisdictions in public utility regulation. About sixty Commission cases from the reports of the Interstate Commerce Commission, the Federal Power Commission, and the Securities Exchange Commission have been used.

The frequent use of dissenting opinions and minority views probably accounts for the placing of the Ben Avon case and the St. Joseph Stock Yards case in the chapter on Limitations in the Exercise of Judicial Review. It is of interest to note that several of Justice Black's dissents are given. Most of the material used is recent. The only case dealing with common law regulation is Munn v. Illinois. Modern legislation is covered

fairly well although the Federal National Gas Act of 1938 is not mentioned and the chapter on Courts and Commissions fails to deal with the necessity of preliminary resort to the appropriate Commission and the finality of the Commission's rules in some cases. Also it seems that the author did not find that the Missouri Public Service Commission was reversed in the case of *Fulton v. Panhandle Eastern Pine Line Company*, 93 S. W. 296 (Mo. 1936).

An unwarranted amount of space is given to the question of rates. The cases on rates which are used are long and are statistical analyses of the relations of that changing factor called valuation to rates rather than a discussion of the legal rights and relations of the parties.

It is to be regretted that Mr. Barnes barely mentions the Rural Electrification Administration, The Tennessee Valley Authority and other Government Divisions which have sponsored power development, which constitute a very interesting and important phase in the development of electric power in the United States.

The last chapter of the book deals with the legality of and the success of public ownership and constitutes a distinct addition.

Houston S. Lay
Assistant Counsel

REVIEWING THE LAW REVIEWS

Note (1939) The Effect of Consolidation, Merger and Sale Upon the After-acquired Property Clause in Corporate Mortgages, 26 Va. L. Rev. 104.

LEGAL MEMORANDA RECEIVED IN OCTOBER

A-91 Admissibility in Evidence of Recorded Film Picture Records. A Study of a Brief Prepared by the Eastman Kodak Company

A-95 Validity of Action Taken at South Carolina Annual Meeting Held on Legal Holiday

A-98 Mississippi Requirements for Grant of a Municipal Franchise to Use Streets and Public Places

A-121 Necessity for Use of "Warning" or "Danger" Signs on REA Projects

TAX MEMORANDA

T-171 Exemption of REA Cooperatives from Arkansas Sales Tax

Public Service Commission RulingSubjecting REA Cooperatives to Juris-diction Appealed to Utah SupremeCourt.

In its order dated August 10, 1939, the Public Service Commission of Utah held that the Garkane Power Company, Inc. (Utah R9006A1 Garfield) was subject to its jurisdiction. A similar order was issued August 11, 1939 in connection with the Moon Lake Electric Association, Inc. (Utah R9008A1 Duchesne). The Supreme Court of Utah granted certiorari October 6, 1939 in the first of these cases after an application for rehearing had been denied by the Commission. Briefs will be filed in a few days and the case will then be listed for argument on the Supreme Court docket. The question as to whether REA cooperatives are within its jurisdiction has been approached by the Commission from the point of view that the cooperative form of organization is a mere device to evade the public utility statutes and that the cooperatives will not, as a matter of practice, live up to the restrictive provisions set forth in their articles and bylaws. This is the most forthright assumption of bad faith that any Commission has thus far made with respect to REA cooperatives.

LEGAL MEMORANDA RECEIVED IN OCTOBER

- A-81-A Mortgagee's Right to Possession in Michigan
- A-82-A Priority of Judgment Creditor With or Without Notice Over Grantee of Unrecorded Virginia Deed--A Supplemental Opinion

Taxation - State Tax on RecordationInvalid as to HOLC Mortgages.

Maryland imposed a recordation tax on mortgages drawn to the Home Owners' Loan Corporation. The Act setting up the HOLC expressly exempts it, its franchise, capital, reserves and surplus, and its loans and income from all state or municipal taxes. Held, that this statutory exemption prohibited the tax in question. Pittman v. HOLC 70 U. S. L. Week 503 (U. S. Sup. Ct. Nov. 6, 1939).

The Court said that Federal Land Bank v. Crosland 261 U. S. 374 was controlling. There a recordation tax was declared invalid as to mortgages issued to a Federal Land Bank because the Federal Farm Loan Act expressly exempted them from taxation. The Court was asked to overrule the Crosland case since such taxes are not discriminatory; and it was contended that Congress could not confer an immunity greater than the Constitutional Immunity. However, the Court answered by stating that Congress had the power to protect the operations of a governmental function by granting tax immunity.

- A-92 Does Inspection of House Wiring by Cooperative Increase the Extent of Cooperative's Liability?
- A-93 Inability of REA to Finance Construction of Buildings to be Used as Combination Project Office and House for Project Superintendent
- A-94 Purchase of Real Property to Settle Claim Against Cooperative
- A-96 Building of Additional Lines Under Present REA Easement Forms

Public Service Commission Hearing

Submitting REA Cooperatives to Jurisdiction

Decision Appealed to Utah Supreme Court

In the order dated August 10, 1932, the Public Service Commission of Utah held that the Garfield Power Company, Inc. (Utah RECOGNIZED Garfield) was subject to its jurisdiction. A similar order was issued August 11, 1932 in connection with the Moon Lake Electric Association, Inc. (Utah RECOGNIZED Moon Lake). The Supreme Court of Utah granted certiorari October 2, 1932 in the first of these cases after an application for rehearing had been denied by the Commission. Briefs will be filed in a few days and the case will then be listed for argument on the Supreme Court docket. The question as to whether REA cooperatives are within the jurisdiction has been approached by the Commission from the point of view that the cooperative form of organization is a mere device to evade the public utility statutes and that the cooperatives will not, as a matter of course, live up to the cooperative provisions set forth in their articles and bylaws. This is the last foregoing assumption of and with this any Commission has been for some time with respect to REA cooperatives.

LEGAL DECISIONS RECEIVED IN OCTOBER

- A-81-A Mortgagee's Right to Possession in Illinois
- A-82-A Priority of Judgment Creditor With or Without Notice Over Grantee of Unrecorded Virginia Deed--A Supplemental Opinion

Taxation - State Tax on Mortgages

Invalid as to HOLO Mortgages

Maryland imposed a recordation tax on mortgages drawn to the Home Owners' Loan Corporation. The Act setting up the HOLO expressly exempted it, its franchise, capital, reserves and surplus, and its loans and income from all state or municipal taxes. Held, that this statutory exemption prohibited the tax in question. Pittman v. HOLO, 90 U. S. 1. Week 502 (U. S. Sup. Ct. Nov. 2, 1932).

The Court said that Federal Land Bank v. Groves, 251 U. S. 274 was controlling. There a recordation tax was declared invalid as to mortgages issued to a Federal Land Bank because the Federal Farm Loan Act expressly exempted them from taxation. The Court was asked to overrule the Groves case since such taxes are not discriminatory; and it was contended that Congress could not confer on a municipality greater than the Constitutional limit. However, the Court answered by stating that Congress had the power to protect the operations of a governmental function by granting tax immunity.

- A-92 Does Inspection of House Wiring by Cooperative Increase the Extent of Cooperative's Liability?
- A-93 Invalidity of REA to Finance Construction of Buildings to be Used as Combination Project Office and House for Project Superintendant
- A-94 Purchase of Real Property to Settle Claims Against Cooperative
- A-95 Validity of Additional Liens Under Present REA Reserve Fund

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| <p>A-97 Inability of REA to Finance and approve the Furnishing of Electric Energy to Towns and Villages Receiving Service</p> <p>A-98 Mississippi Requirements for Grant of a Municipal Franchise to Use Streets and Public Places</p> <p>A-99 Necessity for Reciting Source of Title to Easements in Kentucky Mortgage of Easements</p> <p>A-100 Priority of Judgment Creditor With or Without Notice Over Grantee of Unrecorded Virginia Deed</p> <p>A-101 Necessity for Recording in Mississippi of Transfer of Personal Property and Incorporation by Reference in Deed of Description in Unrecorded Deed</p> <p>A-102 Validity of Missouri Mortgage Whose Maturity Date Extends Beyond Twenty-Five Year Period of Corporate Life</p> <p>A-103 Lack of Need for Authorization by State Supervising Bodies or Members for Incurring of Installation Loan Indebtedness in Arizona</p> <p>A-104 Total Invalidity of Colorado Mortgage Containing REA Stock in Trade Provision</p> <p>A-105 Purchase of Energy at Wholesale from Illinois Cooperative by Illinois Town</p> <p>A-106 Proposed Loan to Bureau of Reclamation by REA Cooperative</p> <p>A-107 Law Relating to the Taking of Possession by the Mortgagee--A Preliminary Survey of the Law in Most States</p> | <p>A-108 Power of a Kentucky Cooperative to Own and Operate a Street Lighting System</p> <p>A-109 Need for Expunging Invalid Stock in Trade Provision in Louisiana Trust Indentures</p> <p>A-110 Effect of Omission of Place of Delivery from Attestation Clause of Deed</p> <p>A-111 Lack of Necessity for Approval by Virginia Corporation Commission for Extension of Lines Where no New Note is to be Executed</p> <p>A-112 Validity of Election of Directors and of Bylaws Increasing Number of Directors and Changing Quorum Requirements - Michigan 26 Ingham</p> <p>A-113 Amendment of Articles of Incorporation in Indiana to Provide for Change in Quorum Requirements</p> <p>A-114 Need for Expunging Invalid Stock in Trade Provision in Ohio and Idaho Mortgages</p> <p>A-115 Validity of Short Term Obligations Issued by City of Nashville and Secured by a Junior Lien on the Revenues of the City's Electric Plant</p> <p>A-116 Possible Procedures to Utilize in Order to Meet Indiana Requirement that Articles of Incorporation Must State Territory to be Served by Cooperative</p> <p>A-117 Present REA Title Retention Provisions as Affecting Negotiability of Consumer's Notes</p> <p>A-118 Must Federal Lending Agencies Ascertain that Projects are Constructed as Economically as Possible?</p> |
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- A-119 Validity of Affidavit by a Subscribing Witness Omitting Date from Jurat in South Carolina Trust Indenture
- A-120 Liability of Landowner for Negligent Construction or Maintenance of Power Lines in Easement which He Has Granted
- A-121 Necessity for Use of "Warning" or "Danger" Signs on REA Projects
- A-122 What constitutes a Proper Signature by a Government Official?

TAX MEMORANDA

- T-160 Transfer to Cooperative of Statutory Liability Imposed Upon Contractors by Michigan Use Taxes
- T-161 Definition of Gross Receipts Under Wisconsin Gross Receipts Tax
- T-162 California Tax Digest
- T-163 Colorado Tax Digest
- T-164 Wyoming Tax Digest
- T-165 Montana Tax Digest
- T-166 Idaho Tax Digest
- T-167 Nebraska Tax Digest
- T-168 Michigan Ad Valorem Assessments
- T-169 Nevada Tax Digest
- T-170 Oregon Tax Digest

- T-171 Exemption of REA Cooperatives from Arkansas Sales Tax
 - T-172 Washington Tax Digest
 - T-173 Non-Liability of Michigan Cooperatives for Use on Articles Contracted for Purchase to November 1, 1937
 - T-174 Jurisdictional Questions in the Pioneer Tax Case Pending in Federal District Court of Ohio
 - T-175 Utah Tax Digest
 - T-176 Maryland Tax Digest
 - T-177 Missouri Tax Digest
 - T-178 Alabama Tax Digest
 - T-179 Kansas Tax Digest
 - T-180 Iowa Tax Digest
 - T-181 Mississippi Tax Digest
 - T-182 Karkansas Tax Digest
- It should be noted that these Tax Digests are part of a series covering the 48 States and are subject to modification upon final consideration and review.
- T-183 Preparation of Ohio IA Miami Case for Trial

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